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FILED
DISTRICT COURT OF GUAM

AUG - 2 2005

MARY L.M. MORAN
CLERK OF COURT

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

JULIE BABAUTA SANTOS, *et al.*,

Petitioners,

vs.

FELIX A. CAMACHO, etc., *et al.*,

Respondents.

CIVIL CASE NO. 04-00006

**DECLARATION OF MICHAEL F. PHILLIPS
IN SUPPORT OF INTERIM CLASS' JOINDER
IN RESPONDENT GOVERNOR OF GUAM'S
RESPONSE TO ATTORNEY GENERAL'S
"OBJECTION" TO THE MAGISTRATE
JUDGE'S ORDER OF MARCH 2, 2005**

I, Michael F. Phillips, declare as follows:

1. I am the attorney of record for the above-named Petitioner, the Interim Class, designated by the District Court of Guam as Interim Class Counsel, and duly admitted to practice before this Court. I make this declaration of my own knowledge, and, if called as a witness, I could and would testify to the facts set forth herein.

2. On February 12, 2004, I filed this class action lawsuit on behalf of my client and all those similarly situated against all named Respondents, including then-Respondent Attorney General of Guam Douglas Moylan. I caused to be served a copy of the applicable Summons and Petition upon each Respondent. Media reports immediately after the suit was filed indicated Respondents' desire to pay the earned income tax credit.

3. Shortly thereafter, Assistant Attorney General J. Basil O'Mallan, III inquired regarding the dismissal of the Attorney General of Guam as a named Respondent. Attorney O'Mallan explained their office did not think the Attorney General was needed as a

1 Respondent in this case if they were going to represent the interests of the Governor and the
2 Directors. Attorney O'Mallan informed me the Office of the Attorney General was awaiting
3 feedback and information from the Governor of Guam regarding the determination of whether
4 the Office of the Attorney General of Guam would represent all Respondents. I eventually
5 agreed to dismiss the Attorney General from this case as a party to the case. See Dismissal,
6 filed March 8, 2004.
7

8 4. Despite media reports indicating a desire from the Governor's Office to pay the
9 EIC and implement the program, the Office of the Attorney General filed an answer to our
10 Petition three (3) days later, March 11, 2004, denying various allegations and setting forth
11 numerous affirmative defenses.
12

13 5. On March 23, 2004, the District Court sent a Scheduling Notice to counsel of
14 record for Petitioner and Respondents. Assistant Attorney General O'Mallan and I began
15 negotiations regarding the required Scheduling Order. We further negotiated minor changes
16 and on April 28, 2004, we filed the required Scheduling Order and Discovery Plan with the
17 District Court;
18

19 6. As part of our discovery and trial schedule negotiations, Assistant Attorney
20 General O'Mallan and I agreed this case was primarily a question of law and an expedited
21 discovery and motion period would serve all parties' interests. Attorney O'Mallan represented
22 he understood the hardship inflicted upon the working poor by not having this matter resolved
23 as quickly as possible. I represented to Attorney O'Mallan (and to the Court) that I had
24 prepared a motion for summary judgment and expected this case to be resolved as a matter of
25 law. After discussions before the Court, all agreed the Petitioner would begin the work needed
26 to move for class certification. I also discussed with Assistant Attorneys General O'Mallan
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1 and Phil Issacs my request for leave to amend Petitioner's class action petition to include
2 years prior to 1998 (date back to 1995). I also informed the Court of my intent during the
3 Scheduling Conference. Attorney Issacs, who represented the Office of the Attorney General
4 during one hearing, informed me he could not make that decision and suggested I speak with
5 Attorney O'Mallan or the attorney presently assigned to the case. Attorney O'Mallan told me
6 he would have to think about my request and would get back to me.
7

8 7. On June 14, 2004, shortly after the local media revealed the Camacho
9 administration ordered Department of Revenue and Taxation personnel to pay out at least one
10 (1) Earned Income Tax Credit payment, and after the Camacho administration announced a
11 policy of paying out EITC payments albeit on a "hardship" basis, Attorney General Moylan
12 raised the possibility of potentially settling the class action. The negotiation of a settlement
13 agreement proceeded with full participation of the Acting Governor at the time. I negotiated
14 and entered into a settlement with the named Respondents, subject to this Court's approval.
15 During settlement negotiations, the parties agreed to a settlement covering income tax filers for
16 tax years 1996 through 2003 (with the exception of 1997 which the previous administration
17 ordered the Department of Revenue and Taxation to pay shortly before a gubernatorial
18 election), and furthermore Respondents agreed to implement the EITC program beginning tax
19 year 2004. Negotiations lasted over three (3) days, and included the Attorney General himself,
20 the Acting Governor of Guam and his staff, and all named Respondents or their
21 representatives.
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24 8. On June 17, 2004, the Court signed an order granting preliminary approval of a
25 Settlement Agreement entered into between the parties in the above-referenced case. The
26 Settlement Agreement called for payment by the Respondents of sixty million dollars
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28

1 (\$60,000,000) in several installments and the creation of an EIC Settlement Fund for the
2 benefit of EIC Class Members.
3

4 9. The proceedings were delayed, however, as on July 6, 2004, Applicant for
5 Intervention Charmaine Torres filed a motion to intervene, and on July 29, 2004, Applicant for
6 Intervention Christina M.S. Naputi also filed a motion to intervene. Both Applicants for
7 Intervention sought to intervene to object to the settlement in favor of seeking additional funds.
8 Applicant for Intervention Naputi based her claim on her belief the settlement sought to
9 compensate persons for claims which lie beyond the statute of limitations. Interestingly, after
10 reversing their arguments and adopting those presented earlier by Interim Class Counsel,
11 Naputi subsequently filed her own separate suit (Simpao, Naputi and Cruz v. Government of
12 Guam, Civil Case No. CV04-00049) addressing the same claims as the class action herein,
13 and although held subsequent to the new settlement reached in this case, this Court recently
14 and specifically found those earlier claims to be valid.
15

16 10. After extensive briefing on the motions for intervention, on August 5, 2004, the
17 Honorable John C. Coughenour, United States Chief District Judge for the Western District of
18 Washington, sitting by designation, denied the Motions for Intervention filed by Applicants
19 Naputi and Torres.
20

21 11. On July 14, 2004, Petitioner filed a Motion for an Order Approving Class
22 Counsel, or, in the Alternative, for an Order Designating Interim Counsel, and on July 16,
23 2004, this Court appointed me as the Interim Counsel for the EIC Class.

24 12. After Petitioner filed a motion for approval of an Administration Plan, the
25 proceedings in the case came to another halt as Respondent Governor, through independent
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1 counsel, on November 9, 2004, filed a Request for Hearing and Objection to the motion for
2 approval of the Administration Plan.
3

4 13. On November 12, 2004, this Court granted a hearing so that Governor Camacho
5 may be heard. On November 24, 2004, Respondent Directors Perez and Ilagan, through
6 independent counsel, also requested a hearing and filed objections to the Administration Plan.

7 14. The Governor of Guam and Directors Perez and Ilagan subsequently filed
8 motions to vacate the order of this Court preliminarily approving the settlement agreement.
9 After extensive filings on the issues raised by the Governor and the Directors, all Respondents,
10 including the Attorney General, entered into mediation to resolve the conflicts.
11

12 15. Although Counsels for the Governor and the Directors and myself continue to
13 disagree on the legal issues related to the original settlement agreement, including the
14 applicability of the Illegal Expenditures Act, in the interests of the class, I agreed it would be
15 best to resolve all pending issues to allow the case to proceed. I filed this case in the interest
16 of my client and those similarly situated. Based on meritless decisions by the Government of
17 Guam over the last ten years, tax credit refunds for the poorest working people of the
18 community were comprehensively denied. These working class individuals and their families
19 have waited more than ten years to have their rights under federal and local law vindicated,
20 and the continued delays in the case only furthered the harm caused by the government.
21

22 16. On March 10, 2005 all the parties, including the Office of the Attorney General,
23 agreed to take the motions to enter the administration plan and to vacate the preliminary
24 approval of the previous settlement off-calendar and to enter mediation before JAMS Mediator
25 Catherine Yanni, Esq.
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1 17. Counsels for the parties, including Attorney General Moylan or his
2 representatives, participated in extensive face-to-face negotiations from March 31, 2005
3 through April 2, 2005.
4

5 18. Negotiations continued for weeks thereafter, and as is apparent from the new
6 settlement agreement reached on June 20, 2005, the Office of the Attorney General declined
7 to participate in the execution of the new settlement agreement to resolve the pending issues
8 raised by the Governor and the Directors. My belief is that the new settlement agreement,
9 aside from providing increased benefits to the EIC Class, also, in the interest of the Class,
10 sought to bring closure to this matter once and for all and to move this case forward after a
11 year and half from its inception, and an entire year from the previous settlement agreement.
12

13 19. For whatever personal or professional reasons the Attorney General may have in
14 objecting to participate in the new settlement agreement, it is apparent those same reasons do
15 not preclude the Attorney General from accepting and apparently agreeing to essentially fast-
16 track an identical and copy-cat class action lawsuit filed by failed Applicant for Intervention
17 Naputi and her Counsel Curtis Van De Veld.
18

19 20. It is common knowledge that the Attorney General and the Governor of Guam
20 have legally fought over the scope of the powers of the Attorney General of Guam in numerous
21 cases, some resolved in local court, some resolved in this Court, and others pending before
22 the Ninth Circuit Court of Appeals. I admit the decisions to continue to engage in struggles
23 over the scope of power of the attorney general are decisions left to those involved, whether it
24 be the Attorney General, the Governor of Guam, or others. However, given the history of
25 delays in this case, and the situation of Petitioners and the EIC Class of having to essentially
26 both litigate the merits of the case and the merits of the original settlement agreement,
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1 continued delays on the basis of a the Attorney General's continued quest to define his role in
2 the government would at worst obliterate the efforts put forth by all parties, including the
3 Attorney General, to finally resolve this case, and at best, only further delay the vindication of
4 the rights of my clients.
5

6 21. The Attorney General's actions in this case include several that are entirely
7 inconsistent with the position it submits today. The Answer submitted by the Attorney General
8 was completely silent regarding the issues he presses today. Early on in this matter, the
9 Attorney General requested that he be dismissed from the action as a named party so he
10 could represent the interests of the Governor and other Respondents, if indeed they desired
11 such representation. In actions to originally settle this matter, the Attorney General did not
12 request and direct settlement pursuant to alleged overall authority to direct this litigation, but
13 pursuant to the full participation (as directed by the Attorney General) of the Acting Governor at
14 the time. Subsequently, the parties entered into mediation, not to the exclusion of the
15 Governor, but with his full participation through counsel, and the participation of the Attorney
16 General. Indeed, the actions of the Attorney General throughout this entire case recognized
17 the rightful participation of the Governor or the Acting Governor, as a client in this matter.
18

19 22. In Pangelinan v. Gutierrez, 2003 Guam 13, a similar situation existed as the
20 Attorney General attempted to change the position of his client, the prior administration, in his
21 request to withdraw a previously filed appellate brief. The Supreme Court ordered the Attorney
22 General to submit a written consent of all named government parties, including the Governor.
23 See Supreme Court Order dated February 10, 2003, attached as Exhibit "A". Indeed, the
24 Attorney General submitted in response a consent of the Governor and other named parties
25 confirming the client's decision to change positions, consistent with viewing the Governor and
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1 other named government parties as clients with authority to make ultimate decisions. See
2 Consent to Withdrawal of Brief and Notification of Change of Position, attached as Exhibit "B".
3 Now, the Attorney General desires to delay the proceedings further despite successful
4 mediation, on issues entirely unrelated thereto, and entirely inconsistent with its recognition
5 throughout this case of the Governor or Acting Governor as parties with the authority to direct
6 this litigation, whether through their own independent counsel, or through their chosen
7 representative earlier in the case, the Office of the Attorney General.
8

9 23. Primarily on the basis of the circumstances described herein, it is my belief that it
10 is in the best interest of my clients, the Petitioner and the EIC Class, that I, on behalf of them,
11 join the Governor of Guam's Response to the Attorney General's "Objection" to the Magistrate
12 Judge's Order of March 2, 2005, that this Court should not amend its March 2, 2005 Order,
13 including specifically an amendment recommending that the issues presented therein be
14 certified for interlocutory review.
15

16 I declare under penalty of perjury pursuant to the laws of the United States and of the
17 Territory of Guam that the foregoing declaration is true and correct.
18

19 Respectfully submitted this 2nd day of August, 2005.
20

21 
22 MICHAEL F. PHILLIPS
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W034

The Law Offices of
PHILLIPS & BORDALLO

FILED
SUPREME COURT
OF GUAM

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IN THE SUPREME COURT OF GUAM

VICENTE C. PANGELINAN
JOSEPH C. WESLEY,

Plaintiff-Appellants.
vs.

CARL T.C. GUTIERREZ, Governor,
JOHN F. TARATINO, Attorney General,
JAMES H. UNDERWOOD, Director of
the Department of Public Works;
EDWARD G. UNTALAN, Administrator
of the Guam Economic Development
Authority; CARL J.C. AGUON, Director
of the Department of Land Management;
Y'ASELA A. PEREIRA, Treasurer of
Guam; GOVERNMENT OF GUAM,

Defendant-Appellee.

GUAM RESOURCE RECOVERY
PARTNERS,

Intervening Defendant-Appellees.

SUPREME COURT CASE NO. 02-003
SUPERIOR COURT CASE NO. 212-00

ORDER

This matter is before the court upon the motion of Defendant-Appellee Douglas B. Moylan, Attorney General of Guam, to withdraw the government's brief. On February 6, 2003, at the oral argument in this matter, the court ordered the Attorney General to submit the written consent of all named government parties to withdraw the brief. The Attorney General submitted such written consent on February 6, 2003. Based upon the consent of all named government parties the court hereby grants the Attorney General's motion to withdraw brief.

At the oral argument, the Attorney General requested leave of the court to file a supplemental brief opposing the position of the Intervening Defendant-Appellee Guam Resources Recovery Partners ("GRRP"). This request was not made in the Attorney General's motion to withdraw brief. Moreover, the Attorney General's brief in reply to GRRP's opposition brief stressed that the filing

1 of a new brief or the making of certain arguments at oral argument were not issues being brought
2 before the court. The court finds that the Attorney General's last minute oral request to file a
3 supplemental brief in opposition to GRRP's positions is inappropriate, untimely, and without merit.
4 We hereby deny the request to file a supplemental brief and admonish the Attorney General for
5 making such a request just before the issues on appeal were to be orally argued.

6 **SO ORDERED**, this 10th day of February, 2003.

7
8 **Frances M. Tydingco-Gatewood**

9 FRANCES TYDINGCO-GATEWOOD
10 Chief Justice, Acting

Peter C. Siguenza, Jr.

PETER C. SIGUENZA, JR.
Justice Pro Tempore

11
12 **John A. Manglona**

13 JOHN A. MANGLONA
14 Designated Justice

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20 I do hereby certify that the foregoing
21 is a full true and correct copy of the
22 original on file in the office of the
23 clerk of the Supreme Court of Guam
24 Dated at Hagatña, Guam

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28 FEB 10 2003

Myrlandia P. Ducta
Deputy Clerk, Supreme Court of Guam

IN THE SUPREME COURT OF GUAM

FEB 6 4 35 PM '03

VICENTE C. PANGELINAN and
JOSEPH C. WESLEY,

Plaintiffs-Appellants,

vs.

CARL T.C. GUTIERREZ, Governor,
JOHN F. TARANTINO, Attorney
General, JAMES H. UNDERWOOD,
Director of the Department of Public
Works; EDWARD G. UNTALAN,
Administrator of the Guam Economic
Development Authority; CARL J.C.
AGUON, Director of the Department
of Land Management; Y'ASELA A.
PEREIRA, Treasurer of Guam;
GOVERNMENT OF GUAM,

Defendants-Appellees,

and

GUAM RESOURCE RECOVERY
PARTNERS,

Intervening Defendant-Appellee.

SUPREME COURT CASE NO. CVA 02-003

SUPERIOR COURT CASE NO. SP 0212-00

CONSENT TO WITHDRAWAL OF BRIEF
AND NOTIFICATION OF CHANGE OF
POSITION

The Law Offices of
PHILIP S. BORDALLO

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2-7-03
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The below identified Defendants-Appellees have previously consented to the withdrawal of their appellate brief opposing the Appeal of Appellants on grounds that we disagree with the position taken in their brief. We agree with the legal position sought by the Attorney General of Guam.

FELIX P. CAMACHO, Governor of Guam

2/6/03


Date:

Pangelinan v. Gutierrez
Supreme Court Case No. CVA 02-003
Consent to Withdrawal of Brief
and Notification of Change of Position



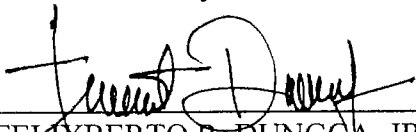
JOSE P. MORCILLA, JR.
Acting Director, Dept. of Public Works

2/6/03
Date:



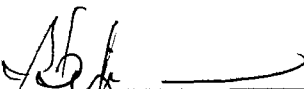
EDWARD G. UNTALAN
Administrator, Guam Economic Development
Authority

02/06/03
Date:



FELIXBERTO R. DUNGCA, JR.
Interim Director, Dept. of Land Management

02/06/2003
Date:




ROSE T. FEJERAN
Acting Treasurer of Guam

2/6/03
Date:

Respectfully submitted:

DOUGLAS B. MOYLAN
Attorney General

By: 

JOSEPH P. GUTHRIE
Deputy Attorney General
Civil Division

2/6/03
Date: